

STATE OF MAINE

CUMBERLAND ss.

SUPREME JUDICIAL COURT
DOCKET NO. BAR-03-3

BOARD OF OVERSEERS OF THE BAR)
)
Plaintiff)
)
v.)
)
CHRISTOPHER J. WHALLEY, ESQ.)
of ELLSWORTH, Maine)
Me. Bar #7370)
)
Respondent)

ORDER

This matter came before this court pursuant to an Information filed on April 9, 2003 (BAR-03-3). Assistant Bar Counsel Geoffrey S. Welsh, Esq. represented the Board of Overseers of the Bar (the Board) and Rosemarie Giosia, Esq., represented Christopher J. Whalley, Esq.

The factual allegations contained in the six counts of the Information generally are admitted by the Respondent. Additionally, he self reported on two other matters after the filing of the Information, and collectively, all of his ethical violations can be summarized as follows:

1. Neglect of client matters, including failure to timely track and calendar litigation deadlines and, in one case, the applicable statute of limitations

thereby resulting in the loss of one client's case and the potential for significant damage to his clients in other cases.

2. Failure to timely communicate with clients about case developments as they occurred.

3. Lack of proper adherence to the Rules of Civil Procedure and court protocol.

4. In one case multiple conflicts of interests, a misrepresentation, and the improper handling of client trust funds, i.e., Count IV (*sua sponte*) of the information.

Although not all of the incidents would warrant the imposition of a significant sanction, taken together, they warrant serious concern and consideration by the Court, which can summarize the source of Mr. Whalley's difficulties as follows:

- a. The logistical difficulties inherent in managing a busy solo practice focused primarily on litigation, including taking on more work than he can satisfactorily and competently handle.
- b. Lack of objectivity about his clients' cases and a too close/emotional identification and personal involvement in his clients' causes.
- c. Stress including family illness and the death of his father.

- d. Participation in the Naval Reserve, which frequently requires him to be absent from his office for significant periods of time without adequate backup support.
- e. Persistent and misguided use of the defense mechanism of “flight avoidance.”

The purpose of bar discipline is not punishment, but “protection of the public and the Courts from attorneys who by their conduct have demonstrated that they are unable to discharge properly their professional duties.” M. Bar R. 3.1(a). Mr. Whalley’s explanation for his behavior, while not completely exculpatory, suggests that he is capable of reform, and the recommendations of both his counsel and Bar Counsel recognize as much.

Accordingly, it is ORDERED that Christopher J. Whalley be suspended from the practice of law for three months, but that suspension itself shall be suspended for a period of one year under the following terms and conditions:

1. Mr. Whalley shall submit his practice of law to the monitoring of David W. Kee, Esq., of Bucksport, Maine.
2. Mr. Kee shall be a volunteer, shall receive no compensation and shall not be expected to incur any substantial disbursements.

3. Mr. Whalley will meet with Mr. Kee at Mr. Kee's calling and convenience, on a bi-weekly basis, unless Mr. Kee determines that more frequent meetings are appropriate.

4. Mr. Kee shall have the right to withdraw and terminate his services at any time for any reason that he deems necessary. If he does so, he shall notify the Court, Bar Counsel and Mr. Whalley of his withdrawal, whereupon this matter shall then be scheduled for further hearing as deemed appropriate by the Court.

5. If any aspect of the monitoring procedures creates a situation, which is, or might be interpreted to be a conflict of interest under the Maine Bar Rules, Mr. Kee may adopt any one of the following courses with the proposed result:

- a. Mr. Kee ceases to act as monitor and a potential conflict is avoided.
- b. Mr. Kee continues as monitor, but totally excludes Mr. Whalley's clients' matter from the monitoring process, so that no conflict is deemed to exist.
- c. Mr. Kee continues as monitor, but withdraws from the conflicted matter.
- d. Mr. Kee continues as monitor, and obligates Mr. Whalley not to participate in the matter and to promptly obtain replacement counsel for his client(s).

6. If in Mr. Kee's judgment it is appropriate, he shall have the right to contact clerks of court, judges, or opposing counsel to determine the accuracy of Mr. Whalley's reports to him.

7. Mr. Kee shall have no contact with any of Mr. Whalley's clients, Mr. Kee's only contacts in the performance of his monitoring duties being with Mr. Whalley or other persons contemplated by this order.

8. Mr. Kee's participation in the disposition of Mr. Whalley's disciplinary case and monitoring of Mr. Whalley's practice shall be deemed *not* to create an attorney-client relationship between Mr. Whalley and Mr. Kee or between Mr. Kee and Mr. Whalley's clients. Specifically, Mr. Kee shall be deemed *not* to represent Mr. Whalley or any of Mr. Whalley's clients or to be employed by them in any capacity and Mr. Kee shall not have any responsibility of any nature to any of them. Moreover, the attorney-client privilege shall not apply to Mr. Kee's monitoring of Mr. Whalley's practice, and Mr. Kee shall be immune from any civil liability (including without limitation, any liability for defamation) to Mr. Whalley or any of Mr. Whalley's clients.

9. Mr. Kee will have the authority to review and examine any of Mr. Whalley's files, except those in which Mr. Kee might have adverse interests under paragraph 5.

10. Mr. Whalley shall prepare and present to Mr. Kee reasonably in advance of each meeting a list of all his current clients, showing each pending client's matter with a brief summary and calendar of the status thereof.

11. Mr. Kee will, as soon as practicable, have Mr. Whalley establish a method of objectively identifying delinquent client matters and have him institute internal checks and controls to make his practice appropriately responsible to the needs of his clients.

12. In Mr. Kee's sole discretion and pursuant to his position as the Director of the Maine Assessment Program for Lawyers and Judges (MAP), Mr. Whalley shall undergo assessment testing at his own expense. Mr. Whalley shall, also at his own expense, enter into contractual follow up with MAP regarding such assessment as Mr. Kee might deem necessary.

13. Mr. Kee shall file a confidential report with the Court every three months or sooner if Mr. Kee deems it necessary, with copies to Mr. Whalley and Bar Counsel concerning at least the following subjects:

- a. measures Mr. Whalley has taken to avoid delinquencies;
- b. a description of any client matter identified as delinquent; and
- c. any professional assistance Mr. Kee has provided to Mr. Whalley.

14. Mr. Kee shall have the duty to report to Bar Counsel and the Court any apparent or actual professional misconduct by Mr. Whalley of which Mr. Kee becomes aware or any lack of cooperation by Mr. Whalley in the performance of this Order.

15. Mr. Kee's monitoring of Mr. Whalley's practice will be for a period of one year, unless terminated earlier as herein provided or by other Order of this Court.

16. Bar Counsel may file an information directly with the Court concerning any new complaints of professional misconduct by Mr. Whalley received by the Board after the date of this order without any Grievance Commission review or hearing.

Date: September 5, 2003

/s/_____
Howard H. Dana, Jr.
Associate Justice
Maine Supreme Judicial Court